

## Permissibility of Certain Investments

**Summary Conclusion:** Federal savings associations may invest in successor-in-interest contracts approved by the Commodity Credit Corporation, USDA, in connection with the Tobacco Transition Payments Program.

**Date:** September 12, 2005

**Subjects:** Home Owners' Loan Act/Savings Association Powers

P-2005-2



**Office of Thrift Supervision**  
Department of the Treasury

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September 12, 2005

**MEMORANDUM**

FOR: Frederick R. Casteel, Regional Director  
OTS Midwest Region

John E. Ryan, Regional Director  
OTS Southeast Region

FROM: John E. Bowman, Chief Counsel

RE: — Permissibility of Certain Investments

**Introduction and Summary Conclusions**

This relates to the recent request for interpretation filed on behalf of (Association), a federal savings association. The Association seeks the concurrence of the Office of Thrift Supervision (OTS) that the Association may invest in certain Successor-in-Interest Contracts (SII Contracts) issued by the Commodity Credit Corporation (CCC), United States Department of Agriculture (USDA), in connection with the Tobacco Transition Payments Program (TTPP). The Association also seeks confirmation that it may make a nominal equity investment, either directly or indirectly through a service corporation, in a limited liability company, Farm Bureau Tobacco Transition Payments Program LLC (LLC), that purchases receivables from tobacco producers and quota holders participating in the TTPP.

In brief, we conclude that the Association may (i) invest in SII Contracts approved by the CCC, and (ii) make a nominal investment in LLC. However, because the SII Contract form and certain related TTPP forms are not yet finalized, our conclusions are subject to the proviso that there be no substantive changes or significant differences between the draft forms we have reviewed and the final versions of the forms. Accordingly, our conclusions are subject to our review of the final SII Contract form and related TTPP forms.

## I. Background

The Association, through its counsel, has provided certain information, including the information summarized below, in connection with its request for a legal interpretation and a related notice and application.<sup>1</sup>

### A. The Tobacco Transition Payment Program

Congress enacted the Fair and Equitable Tobacco Reform Act of 2004 (Tobacco Reform Act) as part of the "American Jobs Creation Act of 2004."<sup>2</sup> The Tobacco Reform Act repeals federal tobacco price support and quota programs, provides payments to tobacco quota owners and tobacco producers for the elimination of the quota, and provides an assessment mechanism for tobacco manufacturers and importers to pay for the buyout. Tobacco quota holders and tobacco producers that participate in the TTPP can receive 10 years of equal payments under a contract with the Commodity Credit Corporation (CCC), which is within the Department of Agriculture. Tobacco quota holders and producers may transfer to a financial institution the right to receive the contract payments (TTPP Payments) in exchange for a discounted lump sum or other payment. The United States Department of Agriculture (USDA) has promulgated regulations to implement the TTPP.<sup>3</sup>

Under the TTPP and the USDA's regulations, tobacco quota holders and producers may transfer their rights to TTPP Payments pursuant to a CCC-approved assignment of payment contract or SII Contract. The assignee or successor, in exchange for the right to receive the TTPP Payments, must pay the quota holder or producer consideration equal to or greater than the discounted value of the TTPP Payments, using the discount rate established by the CCC. Upon execution of a SII Contract by a quota holder or producer and a third party financial institution, and approval by the CCC, all rights and obligations of the quota holder or producer with respect to post-2005 TTPP Payments under its contract with the CCC will be terminated and transferred to the successor.<sup>4</sup>

The regulations provide that tobacco quota holders and producers that are not indebted to any agency of the United States may enter into SII Contracts, and that such contracts will become

<sup>1</sup> See Notice and Application by [redacted] Regarding Proposed Creation of Certain Service Corporations and Requests for Interpretation Regarding Authority of a Federal Savings Bank under the Home Owners' Loan Act ("HOLA"), dated [redacted], 2005, and OTS Order No. [redacted] ( [redacted] ).

<sup>2</sup> Pub. L. 108-357 (October 22, 2004).

<sup>3</sup> See Final Rule, "Tobacco Transition Payment Program," 70 Fed. Reg. 17150 (April 4, 2005) (to be codified at 7 C.F.R. §1463.100 *et seq.*).

<sup>4</sup> 70 Fed. Reg. at 17159 and 17165 (to be codified at 7 C.F.R. §§ 1463.100(b), 1463.111 and 1463.112). See also the USDA, CCC's Notice and Request for Comments, Tobacco Transition Payment Program – Successor-in-Interest Contracts, 70 Fed. Reg. 36919 (June 27, 2005). The successor must also execute certain additional forms and may have to make certain certifications, among other things.

effective upon approval by the CCC.<sup>5</sup> The regulations further provide that (i) the CCC will issue a payment to a successor only if the successor is in compliance with applicable provisions of the USDA's regulations regarding wetlands conservation and highly erodible land conservation, and (ii) any claim owed by the successor to the United States will be deducted from any payment made to the successor.<sup>6</sup>

The Federal Deposit Insurance Corporation (FDIC) has issued examiner guidance regarding the proper treatment of SII Contracts and transfers or assignments of TTPP Payments, and such guidance states that it is permissible for state nonmember banks to take an assignment of payments or SII Contract under the TTPP.<sup>7</sup>

## **B. Proposed Investments**

The Association proposes to enter into SII Contracts with tobacco quota holders and tobacco producers so that the Association would become the "successor" and therefore a party to a contract with the CCC, and be entitled to receive TTPP Payments. The Association has indicated that it would raise funds, on a matched basis from the Federal Home Loan Bank of Dallas, to invest in SII Contracts.

In addition, the Association proposes to make an equity investment in LLC. The LLC, a Delaware limited liability company, was established to purchase contracts from tobacco producers and tobacco quota holders that wish to sell their contracts. The LLC will raise funds by borrowing and will purchase tobacco quota holder and tobacco producer TTPP Payments. Thus, the LLC would hold only contracts issued by the CCC. The LLC would begin operations with four members.<sup>8</sup> The amount of the Association's proposed equity investment in the LLC would be between \$ [redacted] and \$ [redacted].

## **II. Discussion**

### **A. Permissibility of Investment in the Successor-in Interest Contracts**

As indicated above, the Association wishes to invest in SII Contracts issued by the CCC. Section 5(c)(1)(F) of the Home Owners' Loan Act (HOLA) authorizes federal savings associations to invest in "obligations, participations, securities or other instruments issued by, or

<sup>5</sup> 70 Fed. Reg. 17165 (to be codified at 7 C.F.F. § 1463.112(a)).

<sup>6</sup> *Id.* (to be codified at 7 C.F.R. § 1463.112(c)).

<sup>7</sup> See FDIC Financial Institution Letter 73-2005, Tobacco Transition Payment Program, Examination Treatment of Assets Related to the Tobacco Transition Payment Program (August 3, 2005).

<sup>8</sup> The four founding members of the LLC are the American Farm Bureau Federation, the North Carolina Farm Bureau Federation, the South Carolina Farm Bureau Federation, and the Virginia Farm Bureau Federation, each of which will contribute \$250 in exchange for one share of stock. Other state farm bureaus also may become members.

fully guaranteed as to principal and interest by, . . . any agency of the United States.”<sup>9</sup> Thus, the question is whether (i) the CCC is an agency of the United States and (ii) the SII Contracts qualify as “obligations, participations, securities or other instruments” issued or guaranteed by an agency of the United States, within the meaning of section 5(c)(1)(F) of HOLA.

We are satisfied that for purposes of HOLA § 5(c)(1)(F), the CCC qualifies as an “agency of the United States.” The statute authorizing the creation of the CCC provides that it “shall be an agency and instrumentality of the United States, within the Department of Agriculture, subject to the general supervision and direction of the Secretary of Agriculture.”<sup>10</sup>

Based on information currently available, we also conclude that SII Contracts qualify as “obligations” or “instruments” as those terms are used in HOLA 5(c)(1)(F). A recent draft of the SII Contract form (Proposal 18) states that it is a “contract” and that it is not revocable after approval by the CCC.<sup>11</sup> The USDA TTPP regulations define the term “contract” to include SII Contracts<sup>12</sup> and provide that such contracts will become effective upon approval by the CCC.<sup>13</sup> Upon execution and CCC-approval of an SII Contract, a transferor no longer has a right to receive payment from the CCC under the TTPP contract that was transferred, and the successor has all rights to receive payment from the CCC under the TTPP contract.<sup>14</sup> In common parlance, an “obligation” is a formal, binding agreement or acknowledgement of a liability to pay a certain amount or do a certain thing for a particular person or persons,<sup>15</sup> and an “instrument” is a written legal document that defines rights, duties, entitlements, or liabilities, and includes a contract.<sup>16</sup>

<sup>9</sup> 12 U.S.C.A. § 1464(c)(1)(F) (West Supp. 2005).

<sup>10</sup> See 15 U.S.C.A. § 714 *et. seq.* (West 1997 and West Supp. 2005). See also, *Rainwater v. United States*, 356 U.S. 590, 591 (1958) (Supreme Court recognized that CCC “is a part of the ‘Government of the United States’). Moreover, several draft versions of the SII Contract form and other TTPP forms that have been posted on the USDA’s website have included language stating that the CCC is an “agency and instrumentality of the United States.” See *e.g.*, Draft of Form CCC-962 (Proposal 18) titled “Tobacco Transition Payment Program Successor-in-Interest Contract,” Part F, Section 1 (copy attached). See also Appendix to Form CCC-955, Tobacco Transition Payment Quota Holder Contract, at <http://www.fsa.usda.gov/tobacco>.

<sup>11</sup> See Draft of TTPP SII Contract, Form CCC-962 (Proposal 18), Part F, Section 1.

<sup>12</sup> See 20 Fed. Reg. at 17159-60 (to be codified at 7 C.F.R. 1463.102), defining the term “contract” to include, among other things, a “Tobacco Transition Payment Quota Holder Successor In Interest Contract” and a “Tobacco Transition Payment Producer Successor in Interest Contract.”

<sup>13</sup> 70 Fed Reg. at 17165 (to be codified at 7 C.F.R. § 1463.112).

<sup>14</sup> See Notice and Request for Comments: Tobacco Transition Payment Program – Successor-in-Interest Contracts, 70 Fed. Reg. 36919 (June 27, 2005) issued by the CCC, USDA.

<sup>15</sup> Black’s Law Dictionary 1104 (8<sup>th</sup> Ed. 2004).

<sup>16</sup> *Id.* at 813.

The Proposal 18 version of the draft SII Contract form also provides that compliance with provisions of USDA regulations relating to “the protection of environmentally sensitive land” and to conviction of violating controlled substance statutes “shall be based on the 2002, 2003, and 2004 crop years and not on any period thereafter.”<sup>17</sup> By this language, the CCC appears to be attempting to limit grounds for potential disqualification so that a financial institution that did not own the farmland in 2002, 2003, or 2004 would not be disqualified from receiving TTPP Payments as a successor. Proposal 18 further indicates that unless the successor aided and abetted the transferor (quota holder or producer) in certain actions, the TTPP Payments to the successor will not be affected by the transferor’s failure to comply with USDA regulations.<sup>18</sup> Assuming that the final version of the SII Contract form is not significantly different from the Proposal 18 version we have reviewed, and providing there are no substantive changes in the right of a successor to receive TTPP Payments pursuant to a SII Contract, we conclude that CCC-approved SII Contracts are obligations or instruments as those terms are used in HOLA 5(c)(1)(F). Accordingly, the Association may invest in SII Contracts.<sup>19</sup> A corollary to our conclusion is that, under § 5(c)(1)(F) of HOLA, such investments by the Association would not be subject to a percentage of assets limitation. We note, however, that the Association has indicated that it anticipates investing only up to % of assets in SII Contracts. Moreover, the OTS Midwest Region will impose, as appropriate, prudential limits on the Association based on safety and soundness or supervisory considerations.

## **B. Permissibility of Investment in the LLC**

The Association also seeks confirmation that it may make an equity investment, either directly or indirectly via its second-tier service corporation, in the LLC on the basis of pass-through authority or incidental authority. HOLA expressly authorizes federal savings associations to make equity investments in certain limited circumstances.<sup>20</sup> In addition, OTS regulations permit certain equity investments. Under OTS regulation 560.32, a federal savings association may make an equity investment on a pass-through basis, without prior OTS review, in certain entities that engage only in activities that the association may conduct directly, but only if: (1) the investment does not exceed 15% of the association’s total capital; (2) the book value of

<sup>17</sup> Draft of TTPP SII Contract, Form CCC-962 (Proposal 18), Part F, Section 5.

<sup>18</sup> *Id.* at Section 7 provides that “unless the Successor . . . has aided and abetted in the following actions of the Transferor, payments to be made to the Successor . . . shall not be affected in any way by: (i) an adverse determination relating to the transferor’s failure to comply with the regulations at 7 CFR Part 1463 or the regulations and statutes referenced in paragraph 5 [wetlands and controlled substances]; or (ii) any act, failure to act, misrepresentation, debt or other obligation of the Transferor. Payments under this contract shall not be affected by: (i) any dispute or challenge maintained by any person in respect of the Existing Contract; or (ii) any prior or subsequent action or liability of any person with respect to the Existing Contract.”

<sup>19</sup> Upon our review of the final versions of the SII Contract form and related TTPP forms when they are issued, we will determine whether there are substantive or significant changes or issues that affect our conclusion concerning the permissibility of SII Contracts as investments for federal savings associations.

<sup>20</sup> See e.g., 12 U.S.C.A. §§ 5(c)(1)(N) (housing corporations) and (Q) (certain investment companies), and 5(c)(4)(A) (business development credit corporations), (B) service corporations, and (D) (bankers’ banks).



the association's aggregate pass-through investments does not exceed 50% of total capital after making the investment; (3) the investment would not give the association direct or indirect control of the entity; (4) the association's liability is limited to the amount of the investment; and (5) the entity is one of several specified types, including a limited liability company, or an entity in which the association is investing primarily to use the company's services.<sup>21</sup>

The Association's proposed investment in the LLC appears to meet each of the foregoing requirements. We have already concluded that the Association may invest in SII Contracts approved by the CCC. The Association has represented that the only activities the LLC will engage in are acquiring and holding the SII Contracts and raising funds in the form of borrowing, thus, the LLC would only conduct activities that a federal savings association could conduct directly. The Association's proposed investment of \$     to \$     is below the Association's 15% of total capital limit and, according to the Association's counsel, the book value of the Association's investment in the LLC should not exceed the aggregate     % of total capital limit. It appears that the Association would not have direct or indirect control of the LLC because the Association would be only one of a minimum of five investors in, and only one of five directors of, the LLC. Finally, the Association's liability would be limited to the amount of its investment because the LLC is a Delaware limited liability company. Accordingly, the Association may invest in the LLC on a pass-through basis.<sup>22</sup> With respect to whether the Association may make an indirect investment in the LLC through its second-tier service corporation, because the Association can directly make the investment in the LLC, the service corporation is authorized to make the investment under OTS regulation 559.4(a).<sup>23</sup> If the LLC begins to engage in activities or hold assets that are not permissible for a federal savings association, then the Association must promptly notify the OTS Midwest Region.

In reaching the foregoing conclusions, we have relied on the information and factual representations in the materials submitted by the Association and its counsel and in discussions with OTS staff. Our conclusions depend upon the accuracy and completeness of those representations, and material differences in the facts or circumstances could result in different conclusions. Moreover, any substantive or significant changes reflected in the final versions of the SII Contract form and related TTPP forms issued by the CCC may affect our conclusions.

Please note that copies of this Memorandum may be provided to other interested federal savings associations. If you have any questions regarding this matter, please contact Vicki Hawkins-Jones, Special Counsel, at (202) 906-7034.

cc: Regional Directors  
Regional Counsel

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<sup>21</sup> 12 C.F.R. § 560.32(a) and (b) (2005).

<sup>22</sup> Because we have concluded that the Association may invest in the LLC based on pass-through authority, we do not need to reach the question of whether the Association has incidental authority to invest in the LLC.

<sup>23</sup> 12 C.F.R. § 559.4(a) (2005) provides that a service corporation may engage, on a preapproved basis, in any activity that all federal savings associations may conduct directly, except taking deposits.

**D R A F T**

This form is available electronically.

**U.S. DEPARTMENT OF AGRICULTURE  
Commodity Credit Corporation****CCC-962**  
(Proposal 18)**TOBACCO TRANSITION PAYMENT PROGRAM SUCCESSOR-IN-INTEREST CONTRACT****PART A - TRANSFEROR INFORMATION** *(Transferor can be an Original Contract Holder or a Successor-In-Interest)*

By signing this contract, the undersigned signatories acknowledge receipt of the 3 pages that comprise this document and agree to the terms and conditions of this contract. The Transferor understands that in order for this contract to be approved, the Transferor must, in addition to other requirements: (i) have identified in Item 1 a valid Tobacco Transition Payment Program (TTPP) contract, (ii) not have assigned any payment to be made with respect to such contract, and (iii) not be indebted to the United States, as determined by the Commodity Credit Corporation (CCC). In order for CCC to make the determinations in the preceding sentence, the Transferor agrees that CCC may release information to the persons identified in Parts B and C that specify whether the Transferor is in compliance with such requirements.

1. Existing Contract Number	3A. Name and Address (Including ZIP Code)	4. Telephone Number (Including Area Code)
2. TTPP Account Number (If the Transferor is a Successor)	3B. Tax Identification Number	5. FAX Number (Including Area Code)
6. Signature of Transferor	7. Date (MM-DD-YYYY)	8. E-mail Address

Check Item 9 "YES" if the Commodity Credit Corporation (CCC) contract number in Item 1 refers to a Tobacco Transition Payment Quota Holder Contract (Form CCC-955) or a Tobacco Transition Payment Producer Contract (Form CCC-958) (hereafter referred to as Form CCC-955 or CCC-958, respectively) to which the Transferor is a signatory.

Check Item 9 "NO" if the CCC contract number in Item 1 refers to a Tobacco Transition Program Payment Successor-In-Interest Contract (Form CCC-962) (hereafter referred to as Form CCC-962) to which the Transferor is a signatory. Accordingly, in approving this subsequent transfer, (i) neither the Successor nor, if applicable, the Subsequent Successor (as defined in Part C) is required to satisfy the requirements of 7 CFR Part 1493.112(b).

9. Are you the original contract holder? ☐ YES ☐ NO  
☐ QUOTA HOLDER ☐ PRODUCER

If "NO", indicate if the contract is a quota holder or producer contract.

**PART B - SUCCESSOR-IN-INTEREST OR SUBSEQUENT SUCCESSOR-IN-INTEREST**

10. Name and Address (Including ZIP Code)	11A. TTPP Account Number (Must have registered using Form CCC-963)	12. Telephone Number (Including Area Code)
	11B. Tax Identification Number	13. FAX Number (Including Area Code)
15. Signature of Successor	16. Date (MM-DD-YYYY)	14. E-mail Address

If the person acquiring the Existing Contract from the Transferor is immediately transferring their interest to the person identified in Part C, by approval of this contract, CCC is agreeing that (i) there has been a transfer of the Existing Contract to the person identified in this Part (Successor) who was the holder of a Successor-In-Interest contract (Successor Contract) in respect of the Existing Contract, and (ii) there has been a subsequent transfer of the Successor Contract to the person identified in Part C (Subsequent Successor) who shall be the holder of a new Successor-In-Interest contract (Subsequent Successor Contract) in respect of the Successor Contract.

**PART C - COMPLETE THIS PART ONLY IF SUCCESSOR IN PART B IS IMMEDIATELY TRANSFERRING CONTRACT TO ANOTHER PARTY (SUBSEQUENT SUCCESSOR)**

If this Part has been completed, the person identified in this Part (Subsequent Successor) has acquired the interest in the Successor Contract from the Successor.

17. Name and Address (Including ZIP Code)	18A. TTPP Account Number (Must have registered using Form CCC-963)	19. Telephone Number (Including Area Code)
	18B. Tax Identification Number	20. FAX Number (Including Area Code)
22. Signature of Subsequent Successor		21. E-mail Address
		23. Date (MM-DD-YYYY)

**PART D - SUBMIT PAGE 1 ONLY OF COMPLETED FORM**

24. How do you wish to be notified that this contract has been approved? (Check all that apply):

	E-mail	FAX	Regular Mail
Part A Transferor	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Part B Successor	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Part C Subsequent Successor	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

25A. Return Form To:	25B. FAX Form To:	26. Questions Please Call:
OR		

**PART E - CCC USE ONLY**

27. Action: <input type="checkbox"/> Approved <input type="checkbox"/> Disapproved	28. New Contract Number	
29. Signature of CCC Representative	30. Name of CCC Representative	31. Date (MM-DD-YYYY)
32. Date Received (MM-DD-YYYY):	33. Time Received:	<input type="checkbox"/> AM <input type="checkbox"/> PM



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**PART F - SUCCESSOR-IN-INTEREST CONTRACT**

1. **GENERAL.** The CCC is an agency and instrumentality of the United States. After submission of this Form CCC-962 to CCC, the Transferor may not revoke its request for approval. This contract is not revocable after approval by CCC, and shall constitute a Successor-In-Interest contract as provided in 7 CFR Part 1463. The Successor and, if applicable, the Subsequent Successor, has been previously approved by CCC to be a Successor-In-Interest for purposes of the Tobacco Transition Payment Program (TTPP). Execution of this contract by the Successor and CCC shall immediately: (i) terminate all rights of the Transferor with respect to the Existing Contract and, if applicable, all rights of the Successor with respect to the Successor Contract; and (ii) transfer all rights in respect of the Existing Contract to the Successor and, if applicable, transfer all rights in respect of the Successor Contract to the Subsequent Successor; and (iii) allow the Successor or, if applicable, the Subsequent Successor, upon compliance with this contract, to receive all payments that remain payable under the Existing Contract or, if applicable, the Successor Contract, after date of approval of this contract. CCC consents to the sale and transfer of the Existing Contract to the Successor and, if applicable, the transfer of the Successor Contract to the Subsequent Successor, and confirms that, immediately prior to giving effect to such sale and transfer of the Existing Contract, the Transferor was the sole owner of the Existing Contract and was entitled to receive all payments with respect to the Existing Contract and, if applicable, the Successor was the sole owner of the Successor Contract and was entitled to receive all payments with respect to the Successor Contract. Anything to the contrary contained in this contract notwithstanding, the Subsequent Successor, if any, shall not be accountable for any confirmations, obligations or representations of the Successor contained in this contract (including, without limitation, any confirmations, obligations and warranties of the Successor set forth in Paragraph 3), and any failure or default by the Successor in respect of such confirmations, obligations and warranties shall not affect the payment to a Subsequent Successor of amounts owing under this contract.
2. **SALE AND TRANSFER BY TRANSFEROR.** Transferor, for good and valuable consideration, hereby: (i) sells and transfers to the Successor all right, title and interest of the Transferor in and to the Existing Contract, including, without limitation, all rights to receive all payments and other benefits from time to time arising with respect to the Existing Contract, other than the 2005 payment and any subsequent year payment made prior to approval of this contract; and (ii) requests that CCC consent to such sale and transfer and enter into this Successor-In-Interest contract as provided in 7 CFR Part 1463.112. The Transferor hereby acknowledges and agrees that, effectively immediately upon consent of CCC to the foregoing sale and transfer, the Existing Contract will be terminated and the Transferor shall have no further rights or claims with respect thereto or with respect to any right of the Successor or, if applicable, the Subsequent Successor, to receive payment under this contract.
3. **WARRANTIES OF SUCCESSOR.** If Item 9 is marked "YES," the Successor confirms that: (i) the total consideration paid or to be paid to the Transferor by the Successor for such sale and transfer, after giving effect to all fees, expenses and so-called "points and discount fees" charged to or for the account of the Transferor, meets the requirements set forth in 7 CFR Part 1463.112(b); and (ii) such consideration shall be paid to the Transferor on or prior to the later of: (a) the January 15th following the approval by CCC of this contract; or (b) 30 days following such approval. In addition, if Item 9 is marked "YES," the failure of such consideration to meet the requirements set forth in 7 CFR 1463.112(b) or the failure of such consideration to be paid by the date specified in the immediately preceding sentence shall be a basis for CCC to bar the Successor and any person, including the Subsequent Successor, which shall intentionally facilitate such failure, from entering into any subsequent Form CCC-962, but shall not affect any payments or other rights held by a successor to such Successor under previously-approved contracts. The Successor acknowledges that all sales and transfers are subject to post-approval audit by CCC for compliance with the requirements of 7 CFR Part 1463.112(b).
4. **APPLICATION OF CCC DISCOUNT RATE.** The determination of whether the consideration for such sale and transfer meets the requirements set forth in 7 CFR Part 1463.112(b) shall be made by: (i) using the CCC announced discount rate that is in effect on the date this contract is received by CCC; and (ii) applying that discount rate to the date on which such consideration is paid to the Transferor.
5. **APPLICABILITY OF OTHER REGULATIONS.** Successor and, if applicable, the Subsequent Successor, agrees that: (i) the provisions of 7 CFR Part 1403 relating to the offset of CCC payments to pay debts owed to the United States are applicable to TTPP payments to be made in respect of this contract to the Successor or, if applicable, the Subsequent Successor, to the extent such debts are owed by the Successor or, if applicable, the Subsequent Successor; and (ii) if the Existing Contract was evidenced by Form CCC-956 or if the Form CCC-962 being purchased in this transaction relates to a contract originally issued as a Form CCC-956, the provisions of 7 CFR Parts 12, 718.6 and 1400 relating to the protection of environmentally sensitive land and to statutes restricting the right to receive TTPP payments upon conviction of violating certain controlled substances statutes shall apply to the Successor or, if applicable, the Subsequent Successor entitled to receive payments under this contract. Compliance with the provisions set forth in clause (ii) of the preceding sentence shall be based on the 2002, 2003 and 2004 crop years and not on any period thereafter. The receipt by a Successor or, if applicable, a Subsequent Successor, of a TTPP Account Number for CCC-956 Contracts shall constitute a confirmation by CCC that such person has complied with the provisions set forth in clause (ii) of the preceding sentence for such years.
6. **COLLATERAL DOCUMENTS.** Nothing contained in this contract shall in any way restrict the ability of the Transferor or the Successor or, if applicable, the Subsequent Successor, to enter into any other documents or instruments in furtherance of the purposes of this contract (including, in the case of the Successor and any Subsequent Successor, any purchase agreement relating to the Successor Contract), provided that such documents or instruments shall not be inconsistent with the terms hereof or of any law or regulation relating to the TTPP. The sale and transfer of the Existing Contract by the Transferor shall have no effect on the rights, if any, of any creditor of the Transferor to amounts received by the Transferor with respect to the Existing Contract whether as payment previously made to the Transferor by CCC or as payment made by the Successor to the Transferor as consideration for such sale.
7. **ACTIONS OF OTHER PERSONS.** Unless the Successor or, if applicable, the Subsequent Successor, has aided and abetted in the following actions of the Transferor, payments to be made to the Successor and, if applicable, the Subsequent Successor, shall not be affected in any way by: (i) an adverse determination relating to the Transferor's failure to comply with the regulations at 7 CFR Part 1463 or the regulations and statutes referenced in paragraph 5; or (ii) any act, failure to act, misrepresentation, debt or other obligation of the Transferor. Payments under this contract shall not be affected by: (i) any dispute or challenge maintained by any person in respect of the Existing Contract; or (ii) any prior or subsequent action or liability of any person with respect to the Existing Contract.

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**PART F - SUCCESSOR-IN-INTEREST CONTRACT (CONTINUATION)**

8. **PLEDGING OF CONTRACT RIGHTS.** CCC also consents to allowing the Successor and, if applicable, the Subsequent Successor, without prior notification, to pledge its interests in this contract and all payments to be made under this contract, to secure any obligation or indebtedness owed by such person, except such action shall not obligate CCC to issue payments to any party other than the Successor or, if applicable, the Subsequent Successor.
9. **ISSUANCE OF PAYMENTS.** If there is no entry in Part C, CCC will issue payments payable under this contract to the person identified in Part B. If there is an entry in Part C, CCC will issue payments payable under this contract to the person identified in Part C. If any such person entitled to receive a payment under this contract is the Successor or Subsequent Successor to more than one Form CCC-955, Form CCC-956, or Form CCC-962 and no action has been taken under Paragraph 10, CCC will aggregate all payments made under such contracts as one payment without any further action of the Successor or Subsequent Successor.
10. **TRANSFERS, CONSOLIDATIONS AND DIVISIONS OF TTPP CONTRACTS.** CCC will allow the: (i) transfer of this Form CCC-962 to another CCC-approved Successor-In-Interest; (ii) consolidation of this contract with other Forms CCC-962 which bear the same TTPP Account Number held by the Successor, or if applicable, the Subsequent Successor; and (iii) the division of this contract into multiple Forms CCC-962 that are held by the Successor, or if applicable, the Subsequent Successor. The consolidation or division of this contract must be accomplished by use of contracts issued by CCC.
11. **ASSESSMENT OF TRANSACTIONAL FEES.** In order to facilitate the handling of transfers of Forms CCC-962 and related forms, CCC will assess a fee at the rates specified in the Tobacco Transition Payment Program Contract Transfer Fees Schedule (CCC-964). CCC will not assess such a fee if the request is for: (i) a transfer of a Form CCC-955 or Form CCC-956 from the original contract holder to another Form CCC-955 or Form CCC-956; (ii) a transfer of a Form CCC-962 in connection with a bona fide foreclosure of a pledge thereof by a creditor of the holder of the contract; (iii) a combination of Forms CCC-962 bearing the same TTPP Account Number; or (iv) a division of any Form CCC-955, CCC-956 or CCC-962 as the result of the death of the contract holder. Collection of applicable fees must be remitted at the time of request (unless prior arrangement for payment has been approved by CCC).
12. **ANNUAL PAYMENTS.** The expected payment date for annual payments due under this contract is January 15th of each year (or next following business day if January 15th is not a business day in such year). If CCC does not make an annual payment on this date, it agrees that it shall make such payment as promptly as practicable thereafter and shall pay interest, compounded daily, on the amount payable calculated at the "Prompt Payment Act Interest Rate" published in the Federal Register for the period beginning on the expected payment date through and including the day before the payment is made.
13. **AUDITS.** In order for CCC to determine whether the Successor and, if applicable, the Subsequent Successor, have complied with the provisions of this contract, CCC will conduct an audit of such persons at such times as CCC determines to be necessary. Accordingly, such persons agree to maintain for a period of six years from the date that this contract is approved information and records that will allow CCC to verify the consideration paid to the Transferor meets the provisions of this contract and the regulations at 7 CFR Part 1463. In addition, if the Successor or, if applicable, the Subsequent Successor, has submitted page 1 of this contract to CCC in an electronic format, such person agrees to maintain the original paper version of page 1 for six years unless arrangements has been made with CCC for CCC to take custody of such document.

**NOTE:** The authority for collecting the following information is Pub. L. 108-357. The authority allows for the collection of information without prior OMB approval mandated by the Paperwork Reduction Act of 1995. The time required to complete this information collection is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The following statement is made in accordance with the Privacy Act of 1974 (5 USC 552a). The authority for requesting the following information is Pub. L. 108-357 (The Fair and Equitable Tobacco Reform Act of 2004 (the Act)). The information will be used to determine eligibility for program payments. Furnishing the requested information is voluntary. Failure to furnish the requested information will result in a determination of ineligibility. This information may be provided to other agencies, IRS, Department of Justice, or other State and Federal law enforcement agencies, and in response to a court magistrate or administrative tribunal. The provisions of criminal and civil fraud statutes, including 18 USC 286, 371, 641, 651, 1001; 15 USC 714m; and 31 USC 3729, may be applicable to the information provided.